

Message Text

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ORIGIN ERDA-07

INFO OCT-01 EUR-12 ISO-00 OES-06 L-03 ACDA-10 FEA-01

CIAE-00 INR-07 IO-13 NSAE-00 NSC-05 EB-07 NRC-07

DODE-00 /079 R

DRAFTED BY USERDA:AIA:SGRIFFITH

APPROVED BY OES/NET:DHOYLE

USERDA:AIA:GHELFRICH

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R 090147Z DEC 76

FM SECSTATE WASHDC

TO AMEMBASSY PARIS

INFO USMISSION EC BRUSSELS

UNCLAS STATE 299170

E.O. 11652: N/A

TAGS: TECH, FR

SUBJECT: PATENT ARTICLE OF ERDA/CEA NUCLEAR AGREEMENT

1. FOLLOWING IS TEXT OF REVISED PATENT ARTICLE DRAFTED
JOINTLY NOVEMBER 19 BY YVES LE NIGER OF CEA AND ERDA
ASSISTANT GENERAL COUNSEL FOR PATENTS.

QUOTE

ERDA/CEA NUCLEAR AGREEMENT PATENT ARTICLE

1. WITH RESPECT TO ANY INVENTION OR DISCOVERY CONCEIVED
OR FIRST ACTUALLY REDUCED TO PRACTICE IN THE COURSE OF
OR UNDER THE COOPERATIVE ACTIVITIES UNDERTAKEN BY THE
PARTIES IN IMPLEMENTING THIS AGREEMENT:

A. IF CONCEIVED OR FIRST ACTUALLY REDUCED TO PRACTICE

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BY PERSONNEL OF A PARTY (THE ASSIGNING PARTY) OR ITS

CONTRACTORS WHILE ASSIGNED TO THE OTHER PARTY (THE RECIPIENT PARTY) OR ITS CONTRACTORS IN CONNECTION WITH AN EXCHANGE OF SCIENTISTS, ENGINEERS, AND OTHER SPECIALISTS:

(1) THE RECIPIENT PARTY SHALL ACQUIRE ALL RIGHT, TITLE, AND INTEREST IN AND TO SUCH INVENTION OR DISCOVERY, AND ANY PATENT APPLICATION OR PATENT THAT MAY RESULT, IN ITS OWN COUNTRY AND IN THIRD COUNTRIES; AND

(2) THE ASSIGNING PARTY SHALL ACQUIRE ALL RIGHT, TITLE, AND INTEREST IN AND TO SUCH INVENTION, DISCOVERY, PATENT APPLICATION, OR PATENT IN ITS OWN COUNTRY.

B. IF CONCEIVED OR FIRST ACTUALLY REDUCED TO PRACTICE BY A PARTY OR ITS CONTRACTORS AS A DIRECT RESULT OF EMPLOYING INFORMATION WHICH HAS BEEN COMMUNICATED TO IT UNDER THIS AGREEMENT BY THE OTHER PARTY OR ITS CONTRACTORS, BUT NOT OTHERWISE AGREED TO UNDER A COOPERATIVE EFFORT COVERED BY SUBPARAGRAPH 1C:

(1) THE PARTY SO CONCEIVING OR FIRST ACTUALLY REDUCING TO PRACTICE SUCH INVENTION OR DISCOVERY SHALL ACQUIRE ALL RIGHT, TITLE, AND INTEREST IN AND TO SUCH INVENTION OR DISCOVERY, AND ANY PATENT APPLICATION OR PATENT THAT MAY RESULT, IN ITS OWN COUNTRY AND IN THIRD COUNTRIES; AND

(2) THE OTHER PARTY SHALL ACQUIRE ALL RIGHT, TITLE, AND INTEREST IN AND TO SUCH INVENTION, DISCOVERY, PATENT APPLICATION, OR PATENT IN ITS OWN COUNTRY.

C. FOR OTHER SPECIFIC FORMS OF COOPERATION, INCLUDING EXCHANGES OF SAMPLES, MATERIALS, INSTRUMENTS, AND COMPONENTS FOR SPECIAL JOINT RESEARCH PROJECTS, THE PARTIES SHALL PROVIDE FOR APPROPRIATE DISTRIBUTION OF RIGHTS TO INVENTIONS. IN GENERAL, HOWEVER, EACH PARTY SHOULD NORMALLY DETERMINE THE RIGHTS TO SUCH INVENTIONS IN ITS OWN COUNTRY, AND THE RIGHTS TO SUCH INVENTIONS IN OTHER COUNTRIES SHOULD BE AGREED BY THE PARTIES ON AN EQUITABLE BASIS (AND SHOULD NORMALLY PROVIDE FOR A ROYALTY OR SOME OTHER FORM OF COMPENSATION).

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D. NOTWITHSTANDING SUBPARAGRAPHS 1A AND 1B ABOVE, IN ANY CASE WHERE ONE PARTY FIRST ACTUALLY REDUCES TO PRACTICE AFTER THE EXECUTION OF THIS AGREEMENT AN INVENTION, EITHER CONCEIVED BY THE OTHER PARTY PRIOR TO THE EXECUTION OF THIS AGREEMENT, OR MADE OR CONCEIVED NOT IN THE COURSE OF OR UNDER A COOPERATIVE ACTIVITY IMPLEMENTING THIS AGREEMENT, THEN THE PARTIES SHALL

PROVIDE FOR AN APPROPRIATE DISTRIBUTION OF RIGHTS, TAKING INTO ACCOUNT EXISTING COMMITMENTS WITH THIRD PARTIES; PROVIDED, HOWEVER, THAT EACH PARTY SHALL DETERMINE THE RIGHTS TO SUCH INVENTION IN ITS OWN COUNTRY.

E. IT IS UNDERSTOOD THAT AFTER THE EUROPEAN PATENT CONVENTIONS HAVE COME INTO FORCE, EITHER PARTY MAY REQUEST A MODIFICATION OF THIS PARAGRAPH 1 FOR THE PURPOSE OF ACCORDING EQUIVALENT RIGHTS AS PROVIDED IN SUBPARAGRAPHS 1A THROUGH 1D ABOVE UNDER THE EUROPEAN PATENT CONVENTIONS.

2. THE PARTY OWNING A PATENT COVERING ANY INVENTIONS REFERRED TO IN PARAGRAPH 1 OF THIS ARTICLE SHALL LICENSE THE PATENTS TO NATIONALS OR LICENSEES OF THE OTHER PARTY, UPON REQUEST OF SUCH OTHER PARTY, ON NON-DISCRIMINATORY TERMS AND CONDITIONS UNDER SIMILAR CIRCUMSTANCES. AT THE TIME OF SUCH A REQUEST, THE OTHER PARTY WILL BE INFORMED OF ALL LICENSES ALREADY GRANTED UNDER SUCH PATENT.

3. EACH PARTY SHALL TAKE ALL NECESSARY STEPS TO PROVIDE THE COOPERATION FROM ITS INVENTORS REQUIRED TO CARRY OUT THE PROVISIONS OF THIS ARTICLE. EACH PARTY SHALL ASSUME THE RESPONSIBILITY TO PAY AWARDS OR COMPENSATION REQUIRED TO BE PAID TO ITS EMPLOYEES ACCORDING TO THE LAWS OF ITS COUNTRY.

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2. ERDA PREFERS TO DELETE THE LAST THIRTEEN WORDS OF PARAGRAPH 1C. THESE WORDS HAVE BEEN SUPERSEDED BY CHANGES MADE NOVEMBER 19 IN PARAGRAPHS 1A AND 1B, IN WHICH IT WAS AGREED TO DELETE PROVISIONS FOR EXCHANGE OF LICENSES IN VIEW OF CHANGES MADE IN PARAGRAPH 2.

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CONSEQUENTLY, THE THIRTEEN WORDS HAVE NO MEANING AND SHOULD BE STRUCK FROM THE TEXT.

3. DURING NOVEMBER 19 MEETING, IT WAS ALSO AGREED THAT ERDA WOULD PROVIDE SIDE LETTER TO AGREEMENT AS FOLLOWS:

QUOTE

ARTICLE 8 INCLUDES THE TERM QUOTE IN THE COURSE OF OR UNDER, UNQUOTE DRAFTED PURSUANT TO SECTION 152 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED. THIS TERM WILL BE APPLIED EXCLUSIVELY TO INVENTIONS AND DISCOVERIES CONCEIVED OR FIRST ACTUALLY REDUCED TO PRACTICE IN IMPLEMENTING THE AGREEMENT.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: NUCLEAR ENERGY, AGREEMENTS
Control Number: n/a
Copy: SINGLE
Draft Date: 09 DEC 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976STATE299170
Document Source: CORE
Document Unique ID: 00
Drafter: AIA:SGRIFFITH
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760455-0010
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19761257/aaaabxlp.tel
Line Count: 170
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN ERDA
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: wolfsd
Review Comment: n/a
Review Content Flags:
Review Date: 03 JUN 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <03 JUN 2004 by hattaycs>; APPROVED <04 AUG 2004 by wolfsd>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: PATENT ARTICLE OF ERDA/CEA NUCLEAR AGREEMENT
TAGS: TECH, FR, CEA, ERDA
To: PARIS
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006